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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,642	12/31/2001	Thomas Edward Mungavan	C27-002-01-US	5809

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EXAMINER	
STRANGE, AARON N	

ART UNIT	PAPER NUMBER
2153	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/036,642	MUNGAVAN ET AL.	
	Examiner	Art Unit	
	Aaron Strange	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 March 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The declaration filed on 6/7/2006 under 37 CFR 1.131 has been considered but is ineffective to overcome the Langseth et al. (US 6,741,980) reference.

Since Applicant has failed to provide supplemental declarations/affidavits to show evidence of conception of diligence, the declaration remains ineffective for substantially the same reasons set forth in the Office Action of 9/8/2006 (at least ¶1-9). However, as noted below, the effective filing date of Langseth has been determined to be January 21, 2000.

2. Upon further consideration, the Examiner agrees with Applicant that the provisional application 60/126,055 fails to provide adequate support for the subject matter used in the present rejection. Nonetheless, even with an effective filing date of Jan 21, 2000, Langseth's filing predates the filing date of the present application by nearly 2 years.

Applicant's declaration of 6/7/2006 assumed a critical period of January 21, 2000 and December 31,2001, and was ineffective with respect to that period. Since it has not been changed, it remains ineffective and Langseth remains a valid reference under 35 U.S.C. 102(e).

3. The declaration filed on 3/8/07 allegedly under 37 CFR 1.131 has been considered but is ineffective to overcome the Langseth et al. (US 6,741,980) reference.

As an initial matter, this declaration does not comply with the requirements of 37 CFR 1.131, since it does not purport to prove invention of the claimed subject matter prior to the effective date of the Langseth reference. Accordingly, it has been considered under 37 CFR 1.132.

Applicant's assertion that portions of the Mungavan declaration of 6/7/2006 were inadvertently included has been considered, but is moot, since Applicant has failed to show conception or diligence in the previously filed declarations.

Response to Arguments

4. Applicant's arguments, see pages 7-8 of the remarks filed 3/8/07, with respect to the rejection under 35 U.S.C. 102(b) have been fully considered and are persuasive. The rejection of claims 1-27 under 35 U.S.C. 102(b) has been withdrawn.

Particularly, applicant's statement that "the general time frame of 'on or about Deecember 26, 2000' does not preclude the inclusion of a later date up to December 31, 2000 or January 1, 2001." (Page 8 of Remarks) has been interpreted as an affirmative statement that the invention as claimed was not "functioning and delivering subscriptions to customers" until at least December 31, 2000.

5. Applicant's arguments filed 3/8/07 with respect to the rejection under 35 U.S.C. 102(e) have been fully considered but they are not persuasive. Applicant has merely alleged that the Langseth reference is not entitled to a filing date of March 23, 1999. While the Examiner agrees, even with a filing date of January 21, 2000, Langseth is

valid prior art under 35 U.S.C. 102(e). Therefore, Applicant's arguments fail to overcome the Langseth reference, and that rejection is maintained.

6. Applicant's arguments filed 3/8/2007 with respect to claim 7 have been fully considered but they are not persuasive.

With regard to claim 7, Applicant's traversal of the Examiner's assertion of Official Notice is not persuasive and is inadequate. To adequately traverse an assertion of Official Notice, Applicant must specifically point out the supposed errors in the Examiner's action, which would include stating *why the noticed fact is not considered to be common knowledge or well-known in the art*. See 37 CFR 1.111(b) and MPEP 2144.03(c).

Applicant has failed to explain why it was not well-known in the art to retransmit data which has failed to be successfully transmitted. Applicant has merely provided hypotheticals of times where it would not "make sense" to retransmit a failed transmission, but it appears that Applicant assumes that the retransmission would not take place for a long time (1 hour or 24 hours in the example given). The fact that it would not "make sense" to retransmit updates if a long time period has passed does not provide evidence that it was not well known to retransmit data which had failed to be successfully transmitted.

Nonetheless, in a sincere effort to expedite prosecution and avoid further argument over trivial limitations, the Examiner has provided an additional reference

(RFC 2018) which clearly teaches providing feedback to a data sender so that it may retransmit data that was not transmitted successfully (at least Page 1).

7. Applicant's arguments filed 3/8/07 with respect to claims 11 and 18 have been fully considered but they are not persuasive.

With regard to Applicant's assertion that there is no motivation to combine Langseth and Levy (Page 12 of Remarks), the Examiner respectfully disagrees. With regard to Applicant's assertion that Levy "wants to share files", Levy actually wants to limit the sharing of files with users other than the original user. Levy's "no more copy" permission state allows only the original user of the file to view it (at least ¶41). This is not contradictory to Langseth, who also allows an original user to access the content, and is in fact complementary, since it prevents the original user from sharing the content with other users without permission. The motivation to combine the references is apparent and explicitly recited in Levy.

Therefore, Applicant's arguments are not persuasive, and the rejection is maintained.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by

> the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-6,8-10,12-17, and 19-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Langseth et al. (US 6,741,980).

10. With regard to claims 1 and 13, Langseth discloses a distribution system for delivering dynamically assembled media, the distribution system comprising:

a plurality of custom content media programs arranged into discrete, subscriber selectable products (services provide various content from the database) (Col 7, Lines 16-21);

an assembler for bundling a predetermined number of subscriber selected products to create individualized subscriber specific packages (subscribers can subscribe to any number of services) (Col 7, Lines 33-40); and,

a processor for transmitting the subscriber specific packages in a predetermined order to a subscriber (service delivery may be scheduled) (Col 7, Line 55 to Col 8, Line 13).

11. With regard to claim 2, Langseth further discloses a builder for designing the custom content media programs (services are created) (Col 7, Lines 16-17).

12. With regard to claims 3 and 14, Langseth further discloses that a portion of the custom content media programs comprise dynamic content (live sports scores, stock tickers, specifically created audio content, etc)(Col 8, Line 54 to Col 11, Line 20).

13. With regard to claims 4 and 15, Langseth further discloses that a portion of the custom content media programs is generated dynamically, just prior to transmission (live score alerts and stock tickers are dynamically generated just prior to being transmitted) (Col 8, Line 63 and Col 10, Line 45).

14. With regard to claims 5 and 16, Langseth further discloses that the custom content media programs are encoded and compressed prior to transmission (Real Audio transmissions) (Col 11, Lines 7-12).

15. With regard to claim 6, Langseth further discloses that the system is able to collect and distribute a predetermined number of subscriber specific package transmissions across multiple networked hardware devices (transmissions may be distributed to a plurality of data distribution servers) (Col 15, Lines 35-54).

16. With regard to claims 8 and 17, Langseth further discloses that a portion of the custom content media programs is interactive (links to related content) (Col 22, Lines 36-39).

17. With regard to claim 9, Langseth further discloses that a portion of the custom content media programs is based upon predetermined demographic criteria (preferred music type) (Col 11, Lines 7-12).

18. With regard to claim 10, Langseth further discloses the custom content media progrms may be modified based upon feedback from a subscriber (users may modify their profile which would change the provided services) (Col 12, Lines 61-67).

19. With regard to claim 12, Langseth further discloses that a portion of the custom content media programs comprises third party information (subscription interface), and wherein the third party information is used to modify the program to meet a subscriber's changing needs (interface allows information about subscriber to be collected in order to customize the program content)(Col 12, Lines 61-67).

20. With regard to claim 19, Langseth further discloses that the step of creating custom content media programs comprises the step of selecting content that is specific to a subscriber (content may be personalized for subscribers) (Col 7, Lines 37-40).

21. With regard to claim 20, Langseth discloses a method of customizing delivery of dynamically assembled, personalized media to a subscriber, the method comprising the steps of:

a. creating a plurality of custom content media programs arranged into discrete subscriber selectable products (services provide various content from the database) (Col 7, Lines 16-21);

b. assembling subscriber selected discrete products to create a personalized subscriber specific package (subscribers can subscribe to any number of services) (Col 7, Lines 33-40);

c. transmitting the package to a subscriber (Col 7, Line 55 to Col 8, Line 13); and

d. modifying subsequent transmittals (each transmittal will change when real time information such as stock prices and sports scores (Col 8, Line 63 and Col 10, Line 45) is provided or when subscriber modifies their profile) (Col 12, Lines 61-67).

22. With regard to claim 21, Langseth further discloses that the step of modifying subsequent transmittals is based upon subscriber related responses generated by the subscriber (subscribers may modify their profile which would change the provided services) (Col 12, Lines 61-67).

23. With regard to claim 22, Langseth further discloses that the step of modifying subsequent transmittals is based upon subscriber related responses generated by a third party (newly received data will be reflected in subsequent transmittals)(Col 13, Lines 51-65).

24. With regard to claim 23, Langseth further discloses that the step of modifying subsequent transmittals is generated at predetermined intervals (updates may be received after a predetermined interval) (Col 7, Lines 64-66).

25. With regard to claim 24, Langseth further discloses that the step of modifying subsequent transmittals is based upon archived, personal data (updatres in user profiles will be reflected in subsequent transmissions) (Col 12, Line 61 to Col 13, Line 16).

26. With regard to claim 25, Langseth further discloses that the step of assembling the products into a subscriber specific package includes the generation of customized content just prior to the step of transmission (live score alerts and stock tickers are dynamically generated just prior to being transmitted) (Col 8, Line 63 and Col 10, Line 45).

27. With regard to claim 26, Langseth further discloses that the multiple networked hardware devices are from a group comprising: a computer (Col 15, Lines 35-54), a portable mp3 player, a mobile telephone, and a personal digital assistant (PDA).

28. With regard to claim 27, Langseth discloses a distribution system for delivering dynamically assembled media, the distribution system comprising: a plurality of custom content media programs, with each program arranged into a plurality of discrete

subscriber selectable products (services provide various content from the database and are customized for each user) (Col 7, Lines 16-21); an assembler for bundling a predetermined number of subscriber selected discrete products to create subscriber specific packages (subscribers can subscribe to any number of services) (Col 7, Lines 33-40); and, a processor for transmitting the subscriber specific packages in a predetermined order to a subscriber (service delivery may be scheduled) (Col 7, Line 55 to Col 8, Line 13).

Claim Rejections - 35 USC § 103

29. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

30. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Langseth et al. (US 6,741,980) in view of Official Notice.

31. With regard to claim 7, while the system disclosed by Langseth shows substantial features of the claimed invention (discussed above), it fails to specifically recite that the system has the ability to analyze feedback and retransmit subscriber specific packages that fail to be transmitted successfully.

The Examiner takes Official Notice that retransmitting data that fails to be

transmitted successfully is old and well known in the art. It is well known that computer networks are not 100% reliable, and failed transmissions may occur for a large number of reasons. Monitoring for feedback such as an acknowledgement packet and retransmitting content which fails to be transmitted successfully would be advantageous since it would have ensured delivery of the content to the subscriber. Langseth further discloses that FTP may be used to transmit the custom content to subscribers (Col 14, Lines16-34). FTP uses TCP/IP as a transport protocol, and it is well known that TCP/IP provides retransmission of failed transmissions, as shown by RFC 2988 (At least Page 1, Section 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to monitor feedback and retransmit subscriber specific packages that fail to be transmitted successfully. This would have ensured delivery of the content to the subscriber.

32. Claims 11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langseth et al. (US 6,741,980) in view of Levy (US 2002/0052885).

33. With regard to claims 11 and 18, while the system disclosed by Langseth shows substantial features of the claimed invention (discussed above), it fails to disclose that a portion of the custom content media programs includes embedded information designed to deter file sharing.

Levy teaches a method of deterring sharing of audio files that are

distributed via the Internet. Levy discloses embedding information in the audio files that prevents indicates whether or not the file is allowed to be shared (Par 41). This would have been an advantageous addition to the system disclosed by Langseth, since Langseth discloses the delivering personalized radio content (Langseth, Col 11, Lines 4-21). This would have prevented users of the system from sharing the received audio files with users who had not paid for them.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include embedded information in the audio files distributed by Langseth to deter file sharing. This would have prevented users of the system from sharing the received audio files with users who had not paid for them.

Conclusion

34. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Strange whose telephone number is 571-272-3959. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AS
5/14/07

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